In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

JASON LOUIS TINKLENBERG

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the time between the filing of a pretrial motion and its disposition is automatically excluded from the deadline for commencing trial under the Speedy Trial Act of 1974, 18 U.S.C. 3161(h)(1)(D) (Supp. II 2008), or is instead excluded only if the motion actually causes a postponement, or the expectation of a postponement, of the trial.

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PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-28a) is reported at 579 F.3d 589. The orders of the district court denying respondent's motion to dismiss the indictment (App., *infra*, 29a-32a) and denying his motion to reconsider (App., *infra*, 33a-36a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 3, 2009. A petition for rehearing was denied on January 12, 2010 (App., *infra*, 37a-38a). On March 31, 2010, Justice Stevens extended the time within which

to file a petition for a writ of certiorari to and including May 12, 2010. On April 27, 2010, Justice Stevens further extended the time to June 11, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in an appendix to this petition. App., *infra*, 39a-48a.

STATEMENT

This case involves a question about the interpretation of the Speedy Trial Act of 1974 (STA or Act), 18 U.S.C. 3161 *et seq.*, on which the courts of appeals are divided. Following a jury trial in the United States District Court for the Western District of Michigan, respondent was convicted of possessing firearms after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1), and possessing materials used to manufacture methamphetamine, in violation of 21 U.S.C. 843(a)(6). He was sentenced to 33 months of imprisonment, to be followed by three years of supervised release. Before trial, the district court had denied respondent's motion to dismiss the indictment for a violation of the STA. On appeal following respondent's conviction, the court of appeals reversed the district court's judgment and remanded with instructions to dismiss the indictment with prejudice. App., *infra*, 1a-20a.[1]

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[1] On October 13, 2008, after the district court's decision on the motion to dismiss but before the court of appeals' decision, Congress enacted the Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, § 13, 122 Stat. 4294, which made technical changes to the STA. As most relevant here, Congress renumbered the exclusion for pretrial motions delay, which had previously been designated as 18 U.S.C. 3161(h)(1)(F), as 18 U.S.C. 3161(h)(1)(D). Except

1. The STA generally requires a defendant's trial to begin within 70 days of his indictment or his initial appearance before a judicial officer, whichever occurs later. 18 U.S.C. 3161(c)(1). To provide "sufficient flexibility" to make compliance with that deadline a realistic goal, the Act "automatically" excludes from the computation of the 70-day period certain "specific and recurring periods of time often found in criminal cases." S. Rep. No. 212, 96th Cong., 1st Sess. 9 (1979); see *Bloate* v. *United States*, 130 S. Ct. 1345, 1351-1352 (2010). Among those exclusions is "[a]ny period of delay resulting from other proceedings concerning the defendant, including but not limited to * * * delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. 3161(h)(1)(D).

If the defendant is not brought to trial within the 70-day period, "the information or indictment shall be dismissed on motion of the defendant." 18 U.S.C. 3162(a)(2). Dismissal may be with or without prejudice, depending on the district court's weighing of various factors. *Ibid.*; see *United States* v. *Taylor*, 487 U.S. 326, 336-337, 342-343 (1988).

2. In January 2005, a security guard at a store in Michigan notified police that respondent had purchased materials commonly used to cook methamphetamine. The guard provided a description of the camper that respondent was driving. Shortly thereafter, police officers observed respondent driving the camper and stopped him for driving with an open rear door and an

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where noted, all citations in this petition refer to the current version of the STA as codified in the 2008 Supplement to the United States Code.

expired registration tag. Respondent told the officers that he had a pistol next to the driver's seat, and the officers found a pistol there. The officers then searched the camper and found numerous Sudafed tablets, as well as other materials used to manufacture methamphetamine. Respondent also consented to a search of his residence, where officers found a shotgun. In a subsequent search of the residence pursuant to a warrant, officers found additional materials for manufacturing methamphetamine. Presentence Investigation Report (PSR) ¶¶ 5-6.

3. On October 20, 2005, a grand jury in the Western District of Michigan indicted respondent on charges of possessing firearms after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1), and possessing materials used to manufacture methamphetamine, in violation of 21 U.S.C. 843(a)(6). On October 31, 2005, respondent made his initial appearance before a judicial officer. App., *infra*, 1a-2a.

Two days later, on November 2, 2005, a magistrate judge granted respondent's request for a mental competency examination. Respondent was transported from Grand Rapids, Michigan, to the Metropolitan Correction Center in Chicago, Illinois, for the examination. On March 23, 2006, based on the results of the examination, the magistrate judge found respondent competent to stand trial. On March 29, 2006, however, respondent requested a second, independent competency evaluation, and the magistrate judge subsequently granted that request. On June 9, 2006, the magistrate judge again found respondent competent to stand trial. On July 25, 2006, the district court set a trial date of August 14, 2006. App., *infra*, 2a-4a.

Between July 25 and August 14, 2006, the parties filed, and the district court resolved, three pretrial motions. On August 1, the government filed a motion seeking permission to conduct a video deposition of a witness who was scheduled to be out of the country at the time of trial. On August 3, the district court granted the motion. On August 8, the government filed a motion seeking permission to bring the firearms possessed by respondent into the courtroom as evidence at trial. On August 10, the district court granted that motion. On August 11, respondent filed a motion to dismiss the indictment for a violation of the STA's 70-day time limit for commencing trial. On August 14, the district court denied that motion. Respondent's trial began that day and concluded two days later, with the jury finding respondent guilty of all charges. On December 13, 2006, the district court sentenced respondent to 33 months of imprisonment, to be followed by three years of supervised release. App., *infra*, 4a-5a.[2]

4. Respondent appealed, and the court of appeals reversed the district court's Speedy Trial Act ruling and remanded with instructions to dismiss the indictment with prejudice. App., *infra*, 1a-28a.

The court of appeals found that the speedy trial clock began to run on October 31, 2005, the date of respondent's initial appearance, App., *infra*, 7a-9a, and that the days on which a pretrial motion is filed and resolved are excluded from the speedy trial calculation, *id.* at 9a-11a. The court ruled that the periods of delay involving

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[2] On April 21, 2008, while respondent's appeal was pending, he was released from prison and began his supervised release. On May 30, 2008, the district court found that respondent had violated the terms of his supervised release and sentenced him to 14 additional months in prison. App., *infra*, 5a-6a.

the two mental competency examinations of respondent were generally excludable under 18 U.S.C. 3161(h)(1)(A), except that two of the 12 days that it took to transport respondent to the first mental competency examination were not excludable under 18 U.S.C. 3161(h)(1)(F). Accordingly, the court of appeals determined that only 60 non-excludable days had elapsed as of July 31, 2006. App., *infra*, 11a-15a.

The court of appeals held, however, that the nine days spent resolving pretrial motions between August 1, 2006, and the start of trial on August 14, 2006, were not excludable under 18 U.S.C. 3161(h)(1)(D). App., *infra*, 15a-20a. The court acknowledged that "[e]very circuit to have addressed the issue appears to have held that the filing of any pretrial motion stops the Speedy Trial clock, regardless of whether the motion has any impact on the trial's start date." *Id.* at 16a (citing cases). Expressly "disagree[ing]" with that "consensus," however, the court held that "a pretrial motion must actually cause a delay, or the expectation of a delay, of trial in order to create excludable time." *Ibid.* In the court's view, because Section 3161(h)(1)(D) refers to "delay resulting from" pretrial motions, "[t]here is no conceivable way to read" the statute except "as excluding the time in which pretrial motions are filed and pending only if they could possibly cause any delay of trial." *Id.* at 16a-19a. Because the district court did not postpone respondent's scheduled trial date after the filing of the three pretrial motions, and the court of appeals found no indication that the motions "threatened to delay the trial," the court of appeals concluded that the time consumed in resolving the motions was not excluded under Section 3161(h)(1)(D). *Id.* at 19a-20a.

Based on that holding, the court of appeals concluded that a total of 73 non-excludable days elapsed before respondent's trial began and therefore that the trial commenced three days after the expiration of the STA's deadline. App., *infra*, 20a. Rather than remand the case to the district court for a determination under 18 U.S.C. 3162(a)(2) whether to dismiss the indictment with or without prejudice, the court of appeals itself conducted that analysis and remanded with instructions to dismiss the indictment with prejudice. App., *infra*, 21a-22a. The court acknowledged that "the seriousness of the offense" and "the facts and circumstances" that "led to the dismissal," 18 U.S.C. 3162(a)(2), "point[ed] to dismissal without prejudice." App., *infra*, 21a. Nonetheless, the court concluded that dismissal with prejudice was required because respondent had already completed his term of imprisonment. *Id.* at 21a-22a.[3]

Judge Gibbons concurred. App., *infra*, 23a-28a. She disagreed with the majority's calculation of the excludable delay related to the transportation of respondent to and from the first mental competency examination. *Id.* at 17a-19a. Judge Gibbons also believed that respondent had not properly preserved a claim that the three pretrial motions resolved in August did not result in excludable delay, *id.* at 19a-20a, but she agreed with the

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[3] Respondent was released from prison on May 15, 2009. See http://www.bop.gov/iloc2/LocateInmate.jsp. He had not completed his term of supervised release at the time that the court of appeals ordered dismissal of the indictment. Based on the court of appeals' decision, however, the district court discharged respondent from supervised release before he completed that term. 1:05-CR-239 Docket entry No. 256 (W.D. Mich. Sept. 3, 2009). Accordingly, respondent would still have supervised release to serve if this Court were to reverse the court of appeals' judgment.

majority's reading of Section 3161(h)(1)(D) as a matter of statutory interpretation, and she agreed that dismissal with prejudice was warranted. *Id.* at 27a.

REASONS FOR GRANTING THE PETITION

The court of appeals incorrectly interpreted a critically important provision of the Speedy Trial Act, 18 U.S.C. 3161(h)(1)(D), the plain text of which automatically excludes from the Act's deadline for commencing trial "delay resulting from any pretrial motion." According to the court, pretrial motion delay is excludable only if the motion actually causes a postponement, or the expectation of a postponement, of the trial. That interpretation conflicts with the interpretation adopted by all the other courts of appeals with criminal jurisdiction, which have uniformly held that Section 3161(h)(1)(D) automatically excludes all time "from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion," *ibid.*, whether or not the trial is postponed. The majority rule is correct and finds strong support in this Court's decision in *Henderson* v. *United States*, 476 U.S. 321 (1986). The issue also is an important and recurring one in the day-to-day administration of criminal justice in the federal district courts. Accordingly, this Court's review is warranted.

A. The Decision Of The Court Of Appeals Conflicts With Decisions Of Other Courts Of Appeals

With its decision in this case, the Sixth Circuit stands alone among the courts of appeals in holding that "a pretrial motion must actually cause a delay, or the expectation of a delay, of trial in order to create excludable time" under Section 3161(h)(1)(D). App., *infra*, 16a. As the court acknowledged, the First, Third, Fourth, Sev-

enth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits have held that "the filing of any pretrial motion stops the Speedy Trial clock, regardless of whether the motion has any impact on the trial's start date." *Ibid.* (citing *United States* v. *Wilson*, 835 F.2d 1440, 1443 (D.C. Cir. 1987); *United States* v. *Hood*, 469 F.3d 7, 10 (1st Cir. 2006); *United States* v. *Arbelaez*, 7 F.3d 344, 347 (3d Cir. 1993); *United States* v. *Dorlouis*, 107 F.3d 248, 253-254 (4th Cir.), cert. denied, 521 U.S. 1126 (1997); *United States* v. *Montoya*, 827 F.2d 143, 151 (7th Cir. 1987); *United States* v. *Titlbach*, 339 F.3d 692, 698 (8th Cir. 2003); *United States* v. *Vo*, 413 F.3d 1010, 1015 (9th Cir.), cert. denied, 546 U.S. 1053 (2005); *United States* v. *Vogl*, 374 F.3d 976, 985 (10th Cir. 2004); *United States* v. *Miles*, 290 F.3d 1341, 1350 (11th Cir.), cert. denied, 537 U.S. 1089 (2002)). The Second and Fifth Circuits have reached the same conclusion. See *United States* v. *Cobb*, 697 F.2d 38, 42 (2d Cir. 1982), abrogated on other grounds by *Henderson* v. *United States*, 476 U.S. 321 (1986); *United States* v. *Green*, 508 F.3d 195, 200 (5th Cir. 2007), cert. denied, 128 S. Ct. 2871 (2008). The court below expressly "disagree[d]" with the "consensus" of the other courts of appeals, App., *infra*, 16a, and interpreted Section 3161(h)(1)(D) "as excluding the time in which pretrial motions are filed and pending only if they could possibly cause any delay of trial." *Id.* at 19a.

As a result of the decision below, the Act's requirements vary depending on where the defendant is tried. Time consumed by motions will uniformly constitute excludable delay outside the Sixth Circuit but may not stop the speedy trial clock within it. This Court should grant certiorari to ensure that defendants' rights to a speedy trial are the same no matter where the trial takes place.

B. The Decision Of The Court Of Appeals Is Incorrect

The court of appeals concluded that the "clear" language of Section 3161(h)(1)(D) indicates that time consumed in resolving pretrial motions is excludable only when the motions caused, or threatened to cause, postponement of the trial. App., *infra*, 17a. That conclusion is incorrect. Section 3161(h)(1)(D) excludes "[a]ny period" of "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. 3161(h)(1)(D). Thus, "[t]he plain terms of the statute appear to exclude all time between the filing of and the hearing on a motion" without any further factual inquiry. *Henderson*, 476 U.S. at 326. This Court's decisions as well as practical and policy considerations confirm that reading of the statute.

1. In *Henderson*, the Court granted review to resolve a conflict over whether Section 3161(h)(1)(D) excludes delay from a pretrial motion only if the delay was "reasonably necessary." 476 U.S. at 325 n.6. The Court rejected a reasonableness requirement, holding instead that "Congress intended [Section 3161(h)(1)(D)] to exclude from the Speedy Trial Act's 70-day limitation all time between the filing of a motion and the conclusion of the hearing on that motion, whether or not a delay in holding that hearing is 'reasonably necessary.'" *Id.* at 330. The Court explained that the exclusion in Section 3161(h)(1)(D), like almost all the other exclusions in Section 3161(h), is "intended to be automatic." *Henderson*, 476 U.S. at 327 (citation omitted).

The Court's determination in *Henderson* that the defendant's pretrial motions gave rise to excludable delay stands in sharp contrast to the approach taken by the Sixth Circuit here. Applying its interpretation of Sec-

tion 3161(h)(1)(D), *Henderson* held that the time consumed in resolving the pretrial motions at issue was "automatically excludable," without considering whether the motions actually caused postponement, or the expectation of a postponement, of the trial. 476 U.S. at 331-332; cf. App., *infra*, 16a (Sixth Circuit rule requiring delay, or the expectation of delay, of trial). The Court's opinion does not discuss whether a trial date had been set before the motions were filed or whether the district court rescheduled the trial date to accommodate the proceedings on the motions.[4] Thus, the Court's application of Section 3161(h)(1)(D) in *Henderson* indicates that time consumed in resolving pretrial motions is automatically excluded regardless of whether it causes or threatens a postponement of the trial.[5]

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[4] In fact, the record indicates that the initially scheduled trial date had passed six weeks before the motions at issue were filed, and the district court therefore concluded that the trial date had been "vacated" "by inference." J.A. at 25, *Henderson* v. *United States*, 476 U.S. 321 (1986), No. 84-1744. The court did not set a new trial date until after the motions had been resolved. See *id.* at 25-32.

[5] More recently, in *Bloate*, the Court reiterated its conclusion in *Henderson* that Section 3161(h)(1)(D)'s exclusion is "automatic" and requires the exclusion of delay resulting from any pretrial motion "without any further analysis as to whether the benefit of the delay outweighs its costs" and "regardless of the specifics of the case." 130 S. Ct. at 1349 n.1. The Court held that time granted to prepare pretrial motions is not excluded by Section 3161(h)(1)(D), however, because that provision "renders automatically excludable only the delay that occurs '*from the filing* of the motion through the conclusion of the hearing on, or other prompt disposition of[,]' the motion." *Id.* at 1353 (quoting 18 U.S.C. 3161(h)(1)(D)) (emphasis added by Court). Thus, like *Henderson*, *Bloate* strongly suggests that Section 3161(h)(1)(D) automatically excludes the time between the filing of any pretrial motion and its disposition regardless whether a court finds that the motion actually postponed the trial.

2. The court of appeals rejected that reading of Section 3161(h)(1)(D) because it believed that the phrase "delay resulting from" necessarily refers to delay in the commencement of the trial. But the statute's text does not refer to delay of the trial or a continuance of the trial date. And, in light of the STA's purpose, practical considerations in implementing the Act, and its legislative history, it is clear that "the 'delay' referred to is not of the trial itself, but instead of the final date on which the trial must commence." *Cobb*, 697 F.2d at 42. The "delay resulting from" a pretrial motion is thus the interval of time between the filing and resolution of the motion "during which the speedy trial clock [is] stopped and the expiration of the 70-day period thereby postponed." *Ibid.*

The STA's purpose is to afford a reasonably prompt trial, while providing the parties and the court sufficient time for fair and orderly preparation. See *Zedner* v. *United States*, 547 U.S. 489, 497 (2006); S. Rep. No. 212, 96th Cong., 1st Sess. 19-20, 26 (1979); S. Rep. No. 1021, 93d Cong., 2d Sess. 20-21 (1974); H.R. Rep. No. 1508, 93d Cong., 2d Sess. 8, 15, 21-22 (1974). As other courts of appeals have recognized, Congress provided for the automatic exclusion of all time consumed in resolving pretrial motions in order "to structure a method of calculating time which would be reasonably and practically, although not necessarily directly, related to the just needs for pretrial preparation in a particular case." *Cobb*, 697 F.2d at 42.

The automatic exclusion reflects the reality that "[p]retrial motions necessarily take the time of [the opposing party] to respond and courts to evaluate." *Wilson*, 835 F.2d at 1442. And it also accounts for the practical necessity that, in order to ensure that trial com-

mences within the STA's deadline in a particular case, the district court and the parties must know, as each day passes, whether or not that day counts towards the Act's 70-day limit. Thus, as soon as a pretrial motion has been filed, the court and the parties must be able to ascertain whether or not the motion has stopped the speedy trial clock. "[A] clear rule" that all time consumed in resolving any pretrial motion is automatically excluded "puts [the court and] counsel on notice from the outset as to what is excludable." *Vo*, 413 F.3d at 1015-1016. It thus facilitates compliance with the Act while advancing the Act's goal of providing speedy trials without sacrificing the time needed to resolve important pretrial proceedings.

In contrast, the Sixth Circuit's test for when pretrial motions delay is excluded is neither clear nor consonant with the Act's purpose. It is unclear from the court's opinion whether excludability turns on a fact-specific determination whether a particular motion actually necessitated or threatened postponement of the trial or turns instead on whether the trial court formally moved the trial date in response to the motion. In either case, the test does not provide a workable rule that furthers the goals of the Act.

If excludability turns on an individualized determination whether a particular motion actually caused or threatened postponement of the trial, the test will greatly complicate, and may frustrate altogether, the parties' and the court's ability to comply with the Act. Neither the court nor the parties will be able to determine at the time that a motion is filed whether that motion has stopped the speedy trial clock. That question could not be answered until it is possible to ascertain whether the

motion ultimately required or threatened putting off the trial.

Requiring individualized determinations whether a particular motion actually caused or threatened postponement of the trial would also "force courts to resolve intractable causation issues," *Wilson*, 835 F.2d at 1442, leading to extensive pretrial proceedings and even collateral litigation about whether time is excludable, *Dorlouis*, 107 F.3d at 254. For example, if the parties were also engaged in discovery activities while a pretrial motion was pending, the district court would have to determine which of the two activities was responsible for the postponement of the trial. Such "question[s] frequently would pose more difficult issues than the trial itself and in some cases would be simply impossible to determine." *Cobb*, 697 F.2d at 42 n.6.

If, on the other hand, excludability turns on whether the district court formally moves the trial date, the Sixth Circuit's test will lead to arbitrary results that bear no relation to the Act's purpose. For example, if a district court initially sets the trial date sufficiently far out to accommodate the resolution of anticipated pretrial motions, the time consumed in resolving those motions will not be excluded. If, however, the district court does not take the motions into account in setting the initial trial date and resets the date after the motions are filed, the time consumed in resolving them will be excluded. In addition, if a district court puts off other matters so it can resolve motions quickly and therefore does not need to reset the trial date, no time consumed in resolving the motions will be excluded. If, however, the court sets a more relaxed schedule for resolving the motions that enables it simultaneously to address other matters, and

the court therefore needs to reset the trial date, the entire time that the motions are pending will be excluded.

The Sixth Circuit's test would be equally problematic when, as in *Henderson* (see note 4, *supra*), the district court does not set the trial date until after motions are filed or resolved. In that situation, it is entirely unclear how the courts and the parties are to determine whether or not time consumed in resolving the motions is excludable. Since no trial date exists to be reset, courts and parties would have to guess at whether motions create either the reality or an "expectation" of delay of trial.

The Sixth Circuit's test is also inconsistent with the Act's legislative history. As numerous courts of appeals have noted, the legislative history confirms that Congress intended automatically to exclude all time from the filing of a pretrial motion through its disposition, without further inquiry or additional findings. See *Green*, 508 F.3d at 200; *Vogl*, 374 F.3d at 985-986; *Wilson*, 835 F.2d at 1443; *Montoya*, 827 F.2d at 151; *Cobb*, 697 F.2d at 42. See, *e.g.*, S. Rep. No. 212, at 9 (noting that "the Act excludes from [the] computation" of the 70-day time limit "periods consumed by * * * proceedings concerning the defendant, including * * * pretrial motions"); *id.* at 33 (observing that "periods of delay consumed by" motions are "automatically excluded"); *id.* at 34 (stating that Section 3161(h)(1)(D) "provides exclusion of time from filing to the conclusion of hearings on or 'other prompt disposition' of any motion"). At no point in the Act's legislative "history did anyone suggest that the period of delay 'resulting from' a proceeding might be something other than the duration of the proceeding itself." Anthony Partridge, *Legislative History of Title I of the Speedy Trial Act of 1974*, at 26 (1980).

C. The Question Presented Is Of Substantial And Recurring Importance

The court of appeals' erroneous ruling presents an important and recurring issue in the day-to-day administration of criminal justice in the federal system. Pretrial motions are filed in nearly every federal criminal prosecution. The decision below needlessly complicates the calculation of the STA's 70-day time limit for commencing a defendant's trial when such motions are filed in prosecutions within the Sixth Circuit. As described above, if the Sixth Circuit's test requires an individualized determination that a particular motion actually postponed or threatened postponement of the trial, it will prevent district courts and the parties from calculating in advance the STA's deadline for commencing trial and enmesh courts and litigants in disputes over complicated causation issues, thereby adding to, rather than reducing, pretrial delay. If, on the other hand, the Sixth Circuit's test turns solely on whether the district court moves the trial date in response to a pretrial motion, the test will lead to formalistic and arbitrary results that do not advance the STA's purpose and will produce great uncertainty when a motion is filed before a trial date has been set.

The problems created by the court of appeals' ruling may well spread beyond the exclusion of time consumed by pretrial motions. Many other exclusions under the STA contain the same "delay resulting from" language on which the court below relied in imposing its novel requirement that delay from pretrial motions is excluded only if they actually cause or threaten to cause postponement of the trial. The same language appears in the provisions authorizing exclusion of delays associated with mental and physical competency examinations,

18 U.S.C. 3161(h)(1)(A); trial of the defendant on other charges, 18 U.S.C. 3161(h)(1)(B); interlocutory appeals, 18 U.S.C. 3161(h)(1)(C); proceedings relating to the transfer of a case or the removal of any defendant from another district, 18 U.S.C. 3161(h)(1)(E); transportation of any defendant from another district or to and from places of examination or hospitalization, 18 U.S.C. 3161(h)(1)(F); consideration of a proposed plea agreement, 18 U.S.C. 3161(h)(1)(G); the absence or unavailability of the defendant or an essential witness, 18 U.S.C. 3161(h)(3)(A); the defendant's mental incompetence or physical inability to stand trial, 18 U.S.C. 3161(h)(4); and ends-of-justice continuances under 18 U.S.C. 3161(h)(7)(A). The logic of the court of appeals' opinion could lead courts to adopt a proceeding-specific trial-postponement requirement for those exclusions as well. Cf. *Henderson*, 476 U.S. at 327 (construing the exclusion for pretrial-motion delay as similar to the "automatic" exclusion of time consumed by interlocutory appeals, competency examinations, and unavailability of the defendant). The decision below thus threatens serious disruption of the operation of the STA within the Sixth Circuit.

This Court's review is warranted to correct the court of appeals' misinterpretation of the STA, to resolve the disagreement among the courts of appeals, and to restore the smooth functioning of the Act within the Sixth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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